Supreme Court, U.S.
FILED

10-608 OCT 15 2010

OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

MICHAEL T. GREEN

Petitioner

v.

MICHELLE RHEE

Respondent

On Petition for a Writ of Certiorari
To The District of Columbia Court of Appeals

# PETITION FOR WRIT OF CERTIORARI

Michael T. Green
4612 New Hampshire Ave., N.W.
Washington, D.C. 20011
(202) 882-7144

## QUESTIONS PRESENTED

1. Whether the District of Columbia Court of Appeals can here a new issue on appeal that has not been reviewed at the trial court level.

2. Whether the District of Columbia Court Of Appeals erred when it did not reinstate the petitioner to his place of employment and grant the reinstatement of his legal action to D.C. Superior Court.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Michael T. Green, respectfully petitions for writ of certiorari to review the judgment of the District of Columbia Court Appeals in this case.

## PARTIES

The parties include Michelle Rhee, District of Columbia, District of Columbia Public Schools, Stephen Jackson, and George Leonard.

## OPINION BELOW

The order of the Court of Appeals is an unreported decision in civil case No. 09-CV-001445 before the District of Columbia Court of Appeals (App. A).

## JURISDICTION

The District of Columbia Court of Appeals entered its judgment on September 17, 2010 (App. A) and denied Petition for Hearing En Banc. The jurisdiction of the Court is invoked under 28 USCS Section 1254(1) and 28 USCS Section 2101(e).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 USCS Section 1254(1) provides in pertinent part:

Cases in the courts of appeals may be reviewed by the Supreme Court:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 USCS Section 2101(e) provides in relevant part:

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

## STATEMENT OF THE CASE

### A. Basis for Jurisdiction

The D.C. Court of Appeals has jurisdiction to review a new issue on appeal pursuant to D.C. Court of Appeals Rule 35.

Petitioner invokes the jurisdiction of the Court on application for writ of certiorari, pursuant to Supreme Court Rule 11. The D.C. Court of Appeals' decision that the Petitioner is barred from bringing a new issue on appeal in the Court of Appeals conflicts with the Supreme Court of the United States and other federal appellate circuit courts.

### B. Relevant Facts

On August 28, 2008, the Petitioner (Michael T. Green) was hired as an English teacher at Dunbar

High School in the District of Columbia. The Petitioner taught four classes at the school: English 3, English 4, Creative Writing, and Public Speaking during the 2008-2009 academic year. On May 12, 2009, (prior to the end of the school year in June of 2009), the Petitioner interviewed at Dunbar with the Friends of Bedford Inc. (group selected to manage the high school for the 2009-2010 academic year) to remain as an English teacher at the school. On May 14, 2009, the Petitioner received an employment agreement in the form of a letter stating that he had been rehired as an English teacher at Dunbar. On the first day of school at Dunbar on August 24, 2009, the Petitioner was not assigned a classroom or English classes at the school. Around August 31, 2009, the Petitioner was assigned the role of In-School Suspension Coordinator (ISS) at Dunbar. The Petitioner worked in the capacity of ISS Coordinator from August 31-October 2, 2009. The Petitioner was terminated from his duties at Dunbar on October 2, 2009 in violation of his employment agreement on May 14, 2009. See Appendix K.

On October 7, 2009, the Petitioner filed a four count complaint of: 1) Wrongful Termination, 2) Breach of Contract, 3) Intentional Affliction of Emotional Distress, and 4) False Imprisonment in D.C. Superior Court against defendants Michelle Rhee (Chancellor of D.C. Public Schools), District of Columbia, District of Columbia Public Schools (DCPS), Stephen Jackson (Dunbar Principal), and

George Leonard (CEO of Friends of Bedford Inc.). He filed a Motion for a Temporary Restraining Order (TRO) and Motion for Preliminary Injunction as well. The Petitioner requested money damages and reinstatement to Dunbar High School as a teacher for the 2009-2010 school year. The Petitioner's case was assigned to D.C. Superior Court Judge Natalia Coombs-Greene. His TRO hearing was held on October 21, 2009 at D.C. Superior Court and his TRO Motion was denied. On November 9, 2009, the Petitioner's preliminary injunction hearing was held and his motion was denied by a court order issued by the trial judge on November 10, 2009. On November 20, 2009, the Petitioner filed a notice of appeal and interlocutory appeal in the D.C. Court of Appeals involving the two orders issued by the trial judge on October 21, 2009 and November 10, 2009 respectively. The D.C. Court of Appeals granted (January 6, 2010) the Petitioner the opportunity to submit an "Appellate Brief" as a result of his appeal; and he submitted his brief on February 16, 2010. On February 21, 2010, the Petitioner filed a second notice of appeal in D.C. Superior Court as a result of having his case dismissed on February 3, 2010 by the trial judge. On March 25, 2010, the D.C. Court of Appeals consolidated (which he opposed) the Petitioner's two appeals from November 20, 2009 and February 21, 2010.

On April 27, 2010, the Petitioner filed a Motion for Reinstatement to His Place of Employment and Reinstatement of Legal Action to D.C. Superior Court in the D.C. Court of Appeals. He filed his motion on April 27, 2010 after it was

revealed by defendant Michelle Rhee (at a D.C. City Council meeting on April 13, 2010) that 266 teachers (including petitioner) were terminated as Reduction-In-Force (RIF) employees from DCPS erroneously on October 2, 2009 because of a budget deficit or crisis that did not exist. The Petitioner's motion was denied on May 20, 2010 even though he offered substantive evidence which stipulated that he was not a RIF employee of DCPS. Additionally, the court order (May 20, 2010) stipulated that his new appellate brief was due on June 21, 2010 and the Respondents' brief was due on July 26, 2010. The Petitioner submitted his appellate brief on June 21, 2010. On May 28, 2010, the Petitioner filed a Motion for Reconsideration in the D.C. Court of Appeals which was denied on June 16, 2010. Petitioner moved for hearing *en banc* through the Chief Judge of the D.C. Court of Appeals on July 12, 2010, but it was denied on September 17, 2010 by a court order. The En Banc Panel refused to hear the Petitioner's argument concerning whether he met the exceptional or imperative circumstances threshold to have new issues reviewed on appeal in the D.C. Court of Appeals.

Finally, the Petitioner submits this Petition for writ of certiorari to the Supreme Court of the United States.

## REASONS FOR GRANTING THE WRIT

### I. THE DISTRICT OF COLUMBIA COURT OF APPEALS CAN HERE A NEW ISSUE ON APPEAL THAT HAS NOT BEEN REVIEWED AT THE TRIAL COURT LEVEL.

D.C. Court of Appeals Rule 35 states in pertinent part: A majority of the judges who are in regular active service may order that an appeal or other proceeding be heard or reheard en banc. 1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions: or 2) the proceeding involves a question of exceptional importance. On April 13, 2010, the District of Columbia Public Schools (DCPS) Chancellor, Michelle Rhee acknowledged and admitted at a D.C. City Council meeting that a $34 million surplus existed instead of a $40 million deficit that was reported on October 2, 2009 when 266 teachers were terminated from their teaching positions. The Petitioner was discharged from his teaching position at Dunbar High School in the District of Columbia because of a so-called budget deficit and Reduction-In Force (RIF). According to the D.C. Abolishment Act or RIF Act (D.C. Code Section 1-624.02), "reduction in force procedures only apply to those individuals who have actually been RIFed." The revelation by Chancellor Rhee constituted an "exceptional circumstance" where injustice was inflicted on the Petitioner and the other 265

teachers who were discharged by DCPS on October 2, 2009. The Petitioner was effectively fired from his teaching position based on a "budget deficit or shortfall" that did not exist." The Petitioner filed a Motion for Reinstatement to Place of Employment (April 27, 2010) in the D.C. Court of Appeals so that the appellate court could recognize that he was terminated from a position where a budget crisis never existed. However, the D.C. Court of Appeals denied the Petitioner's motion on May 20, 2010; and it invoked the precedent of *Moorhead v. District of Columbia*, 747 A.2d 138 (D.C. 2000). The appellate court reasoned that it could not consider new issues on appeal because its review is limited to the record on appeal and the Petitioner was trying to raise factual assertions not raised in D.C. Superior Court. See Appendix C.

In *Homel v. Helvering*, 312 U.S. 557 (1941), the Supreme Court of the United States ruled that there may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court below. Also, in *Singleton v. Wulff*, 428 U.S. 106, 121 (1976), the high court ruled that there are circumstances in which an appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt to where injustice

might otherwise result. See also *Turner v. City of Memphis*, 369 U.S. 350 (1960), where the U.S. Supreme Court acted on the behalf of an Appellant by ruling that new issues on appeal are acceptable at the appellate level as well. District of Columbia appellate courts have the legal power and authority to review new issues on appeal if the Appellant has proffered legitimate reasons that indicate that "injustice might otherwise result" if the new issues are not entertained on appeal. *Ben-Kotel v. Howard University*, 319 F.3d 532, 535 (D.C. Cir. 2003). See also *District of Columbia v. Air Florida*, 750 F.2d 1077, 1085 (D.C. Cir. 1984) and *Meijer, Inc., v. Biovail Corp.*, 533 F.3d 857, 867 (D.C. Cir. 2008), where the D.C. Circuit appellate court determined that in exceptional circumstances," where injustice might otherwise result, they can entertain an argument for the first time on appeal; and they have the discretion to consider questions of law that were neither raised below nor passed upon by the lower court. Moreover, many circuit appellate courts have instituted rulings throughout the Unites States that entertain new issues on appeal, particularly when someone has been a victim of a miscarriage of justice. For example, the Second Circuit (appellate court) determined that they retain the broad discretion to consider issues not raised initially in the lower court; and they are more likely to exercise discretion where consideration of the issue is necessary to "avoid injustice." *Baker v. Dorfman,* 239 F.3d 415, 420 (2nd Cir. 2000). *In Harvey v.*

*Veneman*, 396 F.3d 28, 45 (1st Cir. 2005), the court ruled that an appellate court can identify several factors when considering a new issue on appeal if it: 1) "is highly persuasive or threatens a miscarriage of justice" if not addressed and 2) "implicates matters of great public moment. An appellate court may consider an issue not raised below where refusal to reach the issue would result in a "miscarriage of justice." *Huber v. Taylor*, 469 F.3d 67, 74-75 (3rd Cir. 2006). An Appellant is not barred from consideration by the appellate court for raising an issue not offered in lower court in the first instance because of the "interest of substantial justice" is at stake. *Dean Witter Reynolds, Inc., v. Fernandez*, 741 F.2d 355, 361 (11th Cir. 1984). Also, the Tenth Circuit ruled that they will consider matters not raised or argued in the trial court only in the "most unusual circumstances and where manifest injustice would result. *Smith v. Rogers Galvanizing Co.*, 128 F.3d 1380, 1386 (10th Cir. 1997). It constitutes an "injustice" when someone is denied a proper resolution when there is no doubt that the result should be decided in the person's favor. *Murray v. Anthony J. Bericucci Const. Co. Inc.*, 958 F.2d 127, 129 (5th Cir. 1992). See also *Green v. Lewis Motors, Inc.*, 179 F.3d 286 (5th Cir. 1999), where the federal appellate court ruled that it had the authority to decide an issue on appeal that was not decided by the lower court, where proper resolution of the issue was beyond doubt and "obvious."

In addition, on May 26, 2010, the District of Columbia City Council enacted the "District of Columbia Public Schools Teacher Reinstatement Act of 2010" into law in the District of Columbia. See Appendix D. The "Act" calls for the reinstatement of the 266 DCPS teachers who were wrongfully terminated from their teaching positions on October 2, 2009. The D.C. City Council initiated this particular "emergency act" because they were thoroughly convinced that the teachers were "wronged and unduly harmed" when it was determined that their termination was improper and unfounded. In short, the D.C. City Council enacted the emergency act as a way of offering the teachers recourse and restitution for being classified as Reduction-In-Force (RIF) employees of DCPS in an erroneous manner. In a similar case to the Petitioner's legal action, a D.C. Superior Court judge [*Washington Teachers' Union v. Rhee* (Civil Action N0. 09ca007482)] denied a motion to dismiss (April 23, 2010) by DCPS against the Washington Teachers' Union (WTU) because of the compelling circumstances that have developed and revealed a budget surplus in DCPS. See Appendix E. This particular judicial action or decision represents a direct response to the new evidence that proves that the Petitioner and the other DCPS teachers were discharged inappropriately. Because of the recent developments in the Petition's case and revelation that no budget deficit existed at DCPS on April 13, 2010, the exceptional importance or

circumstances threshold has been satisfied regarding D.C. App. Rule 35(a)(2). Therefore, the Petitioner's petition was properly submitted in the D.C. Court of Appeals on June 18, 2010 (Appellant's Petition For Hearing En Banc) as a response to the denial of his Motion for Reinstatement to Place of Employment and Motion for Reconsideration in the form of orders on May 20, 2010 and June 16, 2010 respectively (See Appendix B and Appendix C).

In essence, the Petitioner has presented persuasive authority and documented evidence which reveals that he met the "exceptional circumstances" threshold for new issue review in D.C. Court of Appeals. Furthermore, he has met the "obvious standard" (See *Green*, 179 F.3d 286) as well because there is no doubt and it is obvious that he was a victim of a miscarriage of justice when he was terminated by DCPS on October 2, 2009. Precedent in the form of current and controlling law is on the side of the Petitioner and weighs more favorably to the Petitioner than the precedent of the *Moorhead* case invoked in a court order on May 20, 2010 by the D.C. Court of Appeals. In short, the petitioner has demonstrated that the *Moorhead* ruling does not preclude the D.C. Court of Appeals from hearing new issues on appeal. In sum, the Petitioner has provided a solid legal argument that validates that there are sufficient legal grounds for the Supreme Court of the United States to grant him the remedy and relief he is seeking in this

particular lawsuit. The Petitioner requests that he should be provided immediate relief by:

1) Reinstatement to his position as an English teacher at Dunbar High School in the District of Columbia in 2010.

2) Being granted back pay for the period of January 2010 to October 2010.

3) Reinstatement of the Petitioner's medical benefits (dental, eye, and medical care).

4) Reinstatement of Petitioner's retirement benefits.

5) Reinstatement of the Petitioner's legal action involving the claims of: 1) Wrongful Termination, 2) Breach of Contract, 3) Intentional Affliction of Emotional Distress, 4) Discrimination, and 5) False Imprisonment to D.C. Superior Court.

## II. THE TRIAL COURT ERRED WHEN IT DID NOT REINSTATE THE PETITIONER TO HIS PLACE OF EMPLOYMENT AND GRANT THE REINSTATEMENT OF HIS LEGAL ACTION TO D.C. SUPERIOR COURT.

28 USCS Section 1254(1) provides in pertinent part:

> Cases in the Courts of Appeals may be reviewed by the Supreme Court:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

In *Gay, Receiver v. Ruff*, 292 U.S. 25, 30 (1934), the Supreme Court of the United States ruled that the chief requisite to the exercise of a writ of certiorari is that there be a case pending in the Court of Appeals. The high court ruled in *Coleman v. PACCAR INC.*, 424 U.S. 1301, 1304, that whenever a case is "in" the Court of Appeals within the meaning of 28 USCS Section 1254, the court has jurisdiction to grant the writ of certiorari if it chose to do so in the exercise of its discretion. In *United States v. Nixon*, 418 U.S. 683, 690-692 (1974), the U.S. Supreme Court determined that a case is properly in the Court of Appeals if the judgment of the district court or lower court is an appealable order or otherwise falls within the jurisdiction of the

Court of Appeals. The *Coleman* case also ruled that a writ of certiorari is available upon a showing that the case is of such imperative importance to justify deviation from the normal appellate practice and to require immediate determination in the high court. *Coleman*, 424 U.S. 1304. See also Rule 11 of the Rules of the Supreme Court of the United States. The Petitioner submits this "Brief" to the Supreme Court of the United States because of an "issue of imperative and exceptional importance" has surfaced since DCPS Chancellor Michelle Rhee revealed that a budget crisis did not exist when she fired 266 teachers on October 2, 2009. He also presents new evidence in the brief that reveals his termination was unlawful and unwarranted. From the inception of his lawsuit (October 7, 2009, Plaintiff's Motion for Preliminary Injunction), the Petitioner repeatedly expressed through written (Motions, Oppositions, Responses etc.) and oral arguments (TRO and preliminary injunction hearings) that he was not a Reduction-In-Force (RIF) employee of DCPS. However, the trial judge in D.C. Superior Court based her rulings on the erroneous written and oral arguments of the defendants which were predicated on the Petitioner being a RIF employee. Based on the extreme evidence that has recently risen in the matter of *Green v. Rhee et al.* in the D.C. Court of Appeals, it is evident that:

1) Respondents used inaccurate budgetary data and incorrect facts at the trial court level to gain an advantage in the litigation.
2) Respondents used improper data about the

> financial stability of DCPS that caused the trial judge to render adverse decisions (denial of Temporary Restraining Order (TRO), denial of preliminary injunction, and dismissal of Petitioner's case) against Petitioner predicted on the "fact" that he was a RIF employee of DCPS.

In *Yancey v. United States*, 755 A.2d 421, 428 (D.C. 2000), the D.C. Court of Appeals held that it is inappropriate for the court to fail to engage in a proper analysis and inform itself adequately before making rulings that could put an Appellant in circumstances not of his own making. In *Williams v. U.S.*, 576 A.2d 576 1339 (D.C. App. 1990), the D.C. Court of Appeals ruled that the appellate court may set aside the trial court's judgment only if there is an error of law or if the judgment is plainly wrong or without evidence to support it. The trial court must choose wisely so that its judgment reflects a discretion exercised not arbitrarily or willfully but with regard to what is right and equitable under the circumstances and law. *Johnson v. United States*, 398 A.2d 361 (D.C. 1979). See also *Bredehoft v. Alexander*, 686 A.2d 586 (D.C. App. 1996), where the D.C. Court of Appeals ruled that a decision based on an erroneous view of the law or a clearly erroneous evaluation of the evidence, would constitute an abuse of discretion.

In addition, the Petitioner has offered legitimate reasons that showed that injustice may

result if new issues were not entertained on appeal. See *Ben-Kotel*, 319 F.3d 532, 535. The Petitioner has proffered several legitimate reasons for justifying the review of new issues such as:

1) Did the respondents acknowledge that a budget surplus existed when the Petitioner was terminated on October 2, 2009 at DCPS.

2) Did the respondents deceive the D.C. Superior Court and the D.C. Court of Appeals by submitting written arguments that emphatically emphasized that the Petitioner was a RIF employee; thus, they alleged that his termination was lawful and legally sound.

3) Is the Petitioner entitled to be reinstated to his place of employment and have his case reinstated to D.C. Superior Court.

In short, the precedent of the *Williams*, *Yancey*, *Johnson*, and *Bredehoft* rulings indicate that it is wrong and inappropriate to deny an Appellant a direct remedy when he has proven that he is entitled to relief. Reinstatement law is thoroughly established in the District of Columbia; and it is available to offer a remedy and support Appellants who can prove their cases and present persuasive and compelling arguments at the appellate level. In *Kennedy v. District of Columbia*, 654 A.2d 857, 859 (D.C. 1994), the D.C. Court of Appeals ruled that an

appellant was entitled to swift and immediate reinstatement after it was determined that he was discriminated against in an employment setting. The appellate court in the *Kennedy* decision ruled that the employment department should take remedial actions which shall include one or more of the following, but need not be limited to these actions:

1) Retroactive promotion and back pay.
2) Consideration for promotion.
3) Cancellation of unwarranted personnel action and restoration or reinstatement of the employee.
4) Expunction from the department's records of any reference to any record of unwarranted discipline action, and
5) Full opportunity to participate in the employee benefit denied him.

*Kennedy*, 654 A.2d 859. In *Lander v. Lujuan*, 888 F.2d 153, 156 (D.C. Cir. 1989), the federal appellate court ruled that courts must make the victim "whole" by placing him, as near as may be, in the situation he would have occupied if the "wrong" had not been committed. See also *Loeffler v. Frank*, 486 U.S. 549, 550 (1988), where the Supreme Court of the United States ruled that reinstatement is a viable option for victims of unlawful employment acts.

In sum, the Petitioner has thoroughly addressed the essential question of: "Can an

Appellant raise a new issue on appeal for review in the D.C. Court of Appeals." The Petitioner's motion that was filed in the D.C. Court of Appeals on April 27, 2010 raised a serious and unsettled question of law. Therefore, it falls within the parameters of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949) because the Petitioner's case involves an immediate and critical question about whether the D.C. Court of Appeals has the legal power and authority to review issues on appeal. The Petitioner has presented evidence that indicates that District of Columbia law makes it acceptable and appropriate to hear new issues on appeal in the D.C. Court of Appeals. Thus, the D.C. Court Appeals erred when it denied the Petitioner's motion from April 27, 2010 and denied him the opportunity to receive *en banc* hearing on September 17, 2010 through a court order (See Appendix A). See *Hohn v. United States*, 524 U.S. 236 (1998) and *Nixon v. Fitzgerald,* 457 U.S. 731 (1982), where the Supreme Court of the United States through the granting of certiorari before judgment, rendered in favor of Petitioners the kind of judgment on the merits of the appeal that the Court of Appeals could have rendered.

## CONCLUSION

The Petitioner has shown in this "Brief" that his employment predicament represents a situation of "imperative and exceptional circumstances;" and it constitutes a "great public moment as well." See *Harvey*, 396 F.3d 28, 45. He has been without a teaching position in DCPS for over a year (October 2,

2009-October 15, 2010) because of a budgetary error that proved that his dismissal from DCPS was unnecessary and unfounded. In this instance, it is warranted that the Supreme Court use its "extraordinary influence and power" to grant certiorari before judgment of the Court of Appeals. See *Ex Parte Quirin*, 317 U.S. 1 (1942) and *Nixon*, 418 U.S. 683, 714.

For the reasons above, this Court should grant Petitioner's petition for a writ of certiorari.

Respectfully submitted,

MICHAEL T. GREEN
4612 New Hampshire Ave., N.W.
Washington, D.C. 20011
(202) 882-7144

## APPENDIX A

Filed: September 17, 2010

DISTRICT OF COLUMBIA COURT OF APPEALS

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No. 09-CV-1445

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MICHAEL T. GREEN,
Petitioner

v.

MICHELLE RHEE,
Respondent

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ORDER

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Before: Washington, Chief Judge; Ruiz, Reid, Glickman, Kramer, Fisher, Blackburne-Rigsby, Thompson, Oberly, Associate Judges.

On consideration of the appellant's petition for initial hearing en banc, appellant's motion for D.C. Court of Appeals Chief Judge to review appellant's petition, and the opposition to the motion; and it

appearing no judge in regular active service has requested that a vote be taken on the petition for initial hearing en banc, it is

ORDERED that appellant's petition for initial hearing en banc is denied.

Per Curiam

## APPENDIX B

Filed: June 16, 2010

DISTRICT OF COLUMBIA COURT OF APPEALS

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No. 09-CV-1445

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Notice of Appeals: Nos. 09-CV 1445 & 10-CV-224

D.C. Superior Court No.: 2009 CAB 7456

MICHAEL T. GREEN,
Petitioner

v.

MICHELLE RHEE,
Respondent

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ORDER

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Before: Kramer and Blackburne-Rigsby, Associate Judges, and Farrell, Senior Judge.

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On consideration of the appellant's motion for reconsideration of this court's order that denied his motion for summary reversal, the opposition and reply thereto, it is

ORDERED that appellant's motion for reconsideration is denied. It is

FURTHER ORDERED that appellant's supplemental brief for the issues raised in appeal 10-CV224 and joint appendix, see D.C. App. R.30, remain due on or before June 21, 2010. Appellee's consolidated brief shall be filed within 30 days thereafter.

PER CURIAM

## APPENDIX C

Filed: May 20, 2010

DISTRICT OF COLUMBIA COURT OF APPEALS

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No. 09-CV-1445

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Notice of Appeals: Nos. 09-CV 1445 & 10-CV-224

D.C. Superior Court No.: 2009 CAB 7456

MICHAEL T. GREEN,
Petitioner

v.

MICHELLE RHEE,
Respondent

---

ORDER

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Before: Kramer and Blackburne-Rigsby, Associate Judges, and Farrell, Senior Judge.

On consideration of appellant's motion to reinstate to place of employment and reinstate appellant's legal action to D.C. Superior Court, construed as a motion for summary reversal, the opposition and reply thereto, it is

ORDERED that appellant's motion for summary reversal is denied since this court's review is limited to the record on appeal and appellant is attempting to raise factual assertions not previously raised in Superior Court. See *Moorhead v. D.C.*, 747 A.2d 138 (D.C. 2000). If appellant is in possession of additional information that he wishes the court to consider, the proper means for having that information addressed is to file a motion in the Superior Court requesting that the Superior Court reconsider its decision in light of any additional information. If the Superior Court indicates its intention to favorably rule in appellant's favor, appellant shall then file a motion in this court seeking to have the matter remanded to Superior Court. See *Smith v. Pollin*, 90 U.S. App. D.C. 178, 194 F.2d 349 (1952).

FURTHER ORDERED that appellant's supplemental brief for the issues in appeal 10-CV-224 and joint appendix, see D.C. App. R. 30, shall be filed within 30 days from the date of this order, and appellee's consolidated brief shall be filed within 30 days thereafter. See D.C. App. R. 31.

PER CURIAM

## APPENDIX D(a)

## DISTRICT OF COLUMBIA PUBLIC SCHOOLS TEACHER RESINSTATEMENT EMERGENCY ACT OF 2010

General Information
**Legislation #** **Short Title** **Act/Res**:A18-0425
#B18-0784 "District of Columbia Public Schools Teacher Reinstatement Act of 2010"

**Law #**
**Expiration Date**: Tuesday, August 24, 2010
**Enactment/Action Date**: Wednesday, May 26, 2010
**Effective Date**:

Introduction
**Introduction date**: Tuesday, May 4, 2010
**Place of Introduction**: Office of Secretary
**Circulation Date**: Tuesday, May 4, 2010
**Committee Referral**: Retained by Council

**Introduced by**
Thomas, M.Brown, Barry

Council Action
**Committee Action**
**Report Filed**: Emergency Legislation
**COW Action**: Emergency Legislation

**Final Vote/Reading**: 5/4/10
**Third Vote/Reading**

Reconsideration

Voting Information

**Voting Date**: Tuesday, May 4, 2010
**Vote Type**: [x] Voice vote [ ] Roll Call

| **Reading on Record:** | | **Total Vote Count** |
|---|---|---|
| Yvette Alexander | Marion Barry | [12] Yes |
| Vote: Yes | Vote: Yes | [1] No |
| Murial Bowser | Kwame Brown | [0] Present |
| Vote: Yes | Vote: Yes | [0] Absent |
| David Catania | Mary M. Cheh | [0] Recused |
| Vote: Yes | Vote: Yes | [0] Abstained |
| Jack Evans | Jim Graham | [0] Vacant |
| Vote: No | Vote: Yes | [0] Other |
| Vince C. Gray | Michael A. Brown | |
| Vote: Yes | Vote: Yes | |
| Phil Mendelson | Harry Thomas | |
| Vote: Yes | Vote: Yes | |
| Tommy Wells | | |
| Vote: Yes | | |

Mayoral Review
**Transmitted**: Tuesday, May 11, 2010
**Review End Date**: Tuesday, May 25, 2010
**Date Signed**: Not Signed
**Date Returned**:Monday, May 24, 1010
Returned w/o Signature
**Override Date**
**Act/ Resolution #** A-18-425
**Enactment/Action Date**: Wed., May 26, 2010

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Veto Date

Congressional Review
Transmitted
Retransmitted
Projected DC Law Date

D.C. Register Publication
Act/Resolution Date: Friday, June 4, 2010
Vol: 57
Page: 4773

D.C. Law
Law #
Law Effective
Applicability Date
Expiration Date: Tuesday, August 24, 2010

http://www.dccouncil.us/lims/searchbylegislation.asx
10/27/2010

**APPENDIX D(b)**

AN ACT

D.C. ACT 18-425

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 26, 2010

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To require, on an emergency basis, that the office of the chief Financial Officer submit to the council a written determination on whether the District of Columbia Public Schools has a surplus in its fiscal year 2010 budget and its reduction-in-force action was based on an accounting error, and if so, to require the District of Columbia Public Schools to submit a feasibility plan on the possible reinstatement of separated faculty and staff.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Public Schools Teacher Reinstatement Emergency Act of 2010".

Sec. 2. (a) within 14 days of the effective date of this act, the Office of the Chief Financial Officer

shall submit a written determination on whether the District of Columbia Public Schools ("DCPS") has a surplus in its fiscal 2010 budget, including, if applicable, the amount of the surplus and the reason for the surplus.

(b) If the Office of Chief Financial Officer determines there is a budget surplus in DCPS based in part, or in whole, on an accounting error resulting in a reduction-in-force action ("RIF"), the DCPS shall submit to the Council, within 30 days of the effective date of this act, a feasibility plan on whether DCPS plans to reinstate faculty and staff separated from service pursuant to the RIF. The plan shall include:

(1) A legal review of the RIF laws, rules guidelines, and regulations, including the budgetary criteria necessary for a RIF in DCPS;

(2) If DCPS acts to reinstate separated faculty and staff, the length of time necessary to reinstate separate faculty and staff;

(3) If DCPS acts to reinstate separated staff, the criteria used for competitive scale for reinstatement if the Office of Chief Financial Officer determines that funding is available to reinstate fewer than all of the separated faculty and staff; and

(4) A written analysis on whether or not DCPS plans to reinstate separated faculty and staff, and the criteria for that decision.

Sec.3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved

December 24, 1973 [87 Stat. 813; D.C. Official Code Section 1-206.02(c)(3)]

Sec.4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), and shall remain in effect for no longer than 90 days, as provided by emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 [87 Stat. 788; D.C. Official Code section 1-204.12(a)].

_____

Chairman
Council of the District of Columbia

_____

Mayor
District of Columbia
May 21, 2010

## APPENDIX E

The Washington Post Saturday, April 24, 2010

## JUDGE QUESTIONS D.C. TEACHER LAYOFFS

Union is authorized to explore data; lawsuit is upheld

**By Bill Turque**

A D.C. Superior Court judge raised questions Friday about Schools Chancellor Michelle A. Rhee's justification for laying off 266 teachers in October and refused to dismiss a lawsuit filed by the Washington Teachers' Union that is challenging the job cuts. Judge Judith Bartnoff's ruling came 10 days after Rhee disclosed that District finance officials had discovered a $34 million surplus in the 2010 schools budget. That finding came three months after Rhee had cited a budget shortfall as the reason for the layoffs, which sparked bitter student and teacher protests. Rhee had said she intended to use the extra money to help pay for increases in the proposed new labor contract, but the sum was declared nonexistent by D.C. Chief Financial Officer Natwar M. Gandhi. Bartnoff, speaking to union attorney Lee Jackson, acknowledged Jackson's concerns about the legitimacy of the layoffs and said she shared them. Bartnoff's action breathes new life into the union's challenge.

In November, the judge denied the union's bid for a preliminary injunction that would have restored the teachers' jobs. She said the labor group had failed to prove the core of its case: that Rhee went on an unauthorized hiring binge in the spring and summer last year, packing the system with new teachers to create a sham budget crisis that allowed her to conduct an illegal mass firing of older instructors. But Bartnoff said Friday that the case was "morphing" because of recent events. "The issue is now whether it was reasonable for the chancellor to believe last fall that there was a budget shortfall to justify the layoffs," she said. She deferred a motion by District lawyers to dismiss the case and granted the union "limited discovery" to explore the financial information that was available to Rhee at the time of the layoffs. Another hearing is set for June 18.

In a sworn declaration filed this week, Rhee affirmed an earlier sworn document that said she faced a bona fide $44 million budget gap last summer. It consisted of $21 million in reductions ordered by the D.C. Council, $20 million to retain teaching and non-teaching staff whose spots at schools were lost when enrollment declined, and $3 million in severance costs. She said she had "no knowledge" of the surplus when she authorized the layoffs. Robert C. Utiger, a lawyer for the D.C. attorney general's office, called the discovery authority given to the union a potential "fishing expedition." He also said that even if financial projections were wrong, Rhee was not accountable,

because the data were supplied by Gandhi's office. "She isn't the one who the crunches numbers," Utiger said. "She gets them from someone else." He said the union was not entitled to delve into whether or not the chancellor should have second-guessed the CFO.

In response to a question from Bartnoff, Utiger said there is little the District can do for the laid-off teachers, even if a budget surplus is authenticated. The most they would receive is "priority consideration" in the event that jobs open up that match their skills. As part of Friday's action, district and union attorneys agreed to postpone arbitration hearings involving laid-off teachers who have filed grievances contesting the job cuts. Bartnoff said she does not think the union can seek arbitration in cases that arise from layoffs.

## APPENDIX F

Filed: October 21, 2009

DISTRICT OF COLUMBIA SUPERIOR COURT

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2009 Ca 007456 B

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MICHAEL T. GREEN,
Plaintiff

MICHELLE RHEE ET AL.,
Defendant

Docket Entry Oral Ruling on Written Motion
Entered on the Docket.

DESCRIPTION
Oral Ruling Denying Plaintiff Written Motion for Temporary Restraining Order Entered on the Docket.

Entered By: MANCINIJ Updated By: MANCINIJ
Updated Date: 10/21/09

## APPENDIX G

Filed: November 10, 2009

DISTRICT OF COLUMBIA SUPERIOR COURT

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2009 Ca 007456 B

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MICHAEL T. GREEN,
Plaintiff

MICHELLE RHEE ET AL.,
Defendant

Docket Entry Oral Ruling on Written Motion
Entered on the Docket.

DESCRIPTION
Oral Ruling Denying Plaintiff Motion for
Preliminary Injunction Entered on the Docket.

Entered By: MANCINIJ Updated By: MANCINIJ
Updated Date: 11/10/09

## APPENDIX H

Filed: January 15, 2009

DISTRICT OF COLUMBIA SUPERIOR COURT

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2009 Ca 007456 B

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MICHAEL T. GREEN,
Plaintiff

MICHELLE RHEE ET AL.,
Defendant

Docket Entry Event Resulted:

DESCRIPTION
Event Resulted:
The following event: Initial Scheduling Conference 60 scheduled for 01/15/2010 at 9:00am has been resulted as follows:

Result: Scheduling Conference Hearing Not Held CourtSmart 100. All parties present. Plaintiff's Motion to Recuse Trial Judge was Denied by the Court. Plaintiff's Motion for Reconsideration was Denied by the Court. Motion to Dismiss is still pending. Further Status Hearing set for 2/26/2010 at 10:00am. Tb Judge: BARTNOFF, JUDITH

Location: Courtroom 100. Michael Green (Plaintiff); Miss Ellen A. Efros (Attorney) on behalf of Michelle Rhee (Defendant); Judge JUDITH BARTNOFF

Entered By: BROOKST Updated By: BROOKST
Updated Date: 1/15/10

## APPENDIX I

Filed: January 26, 2010

DISTRICT OF COLUMBIA SUPERIOR COURT

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2009 Ca 007456 B
Judge Natalia M. Coombs Greene

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MICHAEL T. GREEN,
Plaintiff

MICHELLE RHEE ET AL.,
Defendant

ORDER

This matter is before the Court upon Plaintiff's Motion to Recuse Trial Judge (the "Motion"), the Memoranda of Points of Authorities in Support thereof, the Affidavit of Bias, the District's Opposition thereto, and the entire record herein. For the following reasons the Motion is denied.

The Motion is procedurally deficient. Rule 63-I requires that the movant submit an affidavit of bias and a certificate by counsel "stating that it is made in good faith." Plaintiff failed to include a

certificate of good faith. Notwithstanding this procedural defect, Plaintiff fails to allege any instance of extrajudicial bias. *In re Bell*, 373 A.2d 232 (1977), and is therefore substantively with merit.* Accordingly, it is this 26th day of January, 2010, hereby

**ORDERED** that the Motion to Recuse Trial Judge is Denied:

**SO ORDERED.**

Natalia M. Coombs Greene
(Signed in Chambers)

* The court notes that Plaintiff's Motion is also moot. On January 1, 2010, this Court changed to Calendar Four. Judge Bartnoff now presides over Calendar Five and the case, in the ordinary course, has been transferred to Judge Bartnoff.

## APPENDIX J

Filed: February 3, 2010

DISTRICT OF COLUMBIA SUPERIOR COURT

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2009 Ca 007456 B
Judge Natalia M. Coombs Greene

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MICHAEL T. GREEN,
Plaintiff

MICHELLE RHEE ET AL.,
Defendant

ORDER

This Matter is before the Court upon Defendants' Motion to Dismiss (the "Motion"), the Opposition and the entire record herein.[1] Upon consideration, the Motion is granted for the reasons set forth herein.

**Background**

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[1] Neither party sought leave of Court to file a reply. Both parties, however, filed replies. Notwithstanding the parties failure in this regard, the Court reviewed the replies.

Plaintiff Michael T. Green is a former teacher at Dunbar High School "Dunbar") in the District of Columbia. Plaintiff has sued Michelle Rhee, the Chancellor of D.C. Public Schools ("Chancellor Rhee"), George Leonard, the CEO of Friends of Bedford, Inc. ("CEO Leonard"), Stephen Jackson Dunbar's Principal ("Principal Jackson"), the District of Columbia Schools ("DCPS"), and the Government of the District of Columbia ("Mayor's Office").

Plaintiff was hired to teach English at Dunbar on August 28, 2008. For the 2008-2009 school year he taught four subjects to junior and seniors. He took students on field trips. He invited college and trade school guest speakers to class and performed a number of duties beyond class. On May 5, 2009, he received a Certificate of Appreciation for outstanding service. On May 14, 2009, the DCPS human resources office sent Plaintiff a letter, which indicated he had been selected to teach for the 2009-2010 school year. In June 2009, Principal Jackson evaluated Plaintiff and stated he "met expectations." That summer Plaintiff attended teacher training at American University.

The Friends of Bedford Inc. is a New York based nonprofit organization that DCPS partnered with to administer the academic direction at Dunbar for the 2009-2010 year. In August 2009, administrators appointed Plaintiff to the position of In-School-Suspension (ISS) Coordinator. As ISS Coordinator, Plaintiff had a number of

responsibilities. On October 2, 2009, Plaintiff was notified by Mr. Leonard that he had been terminated from Dunbar. Plaintiff alleges he had to "negotiate with a Metropolitan Police Department Officer to retrieve his personal possessions" before being escorted from the building. (Pl. Am. Compl. P.41). (The Officers allegedly followed Plaintiff closely and watched him while he collected his things.)

Plaintiff's Amended Complaint alleges four counts: (1) Wrongful Termination against all Defendants, (2) Breach of Contract against all Defendants, (3) Intentional Affliction of Emotional Distress against all Defendants, and (4) False Imprisonment against all Defendants. Plaintiff seeks $2.5 million in compensatory and punitive damages, the reasonable costs of attorney's fees (Plaintiff is proceeding pro se), all costs, and any other relief the Court deems proper.

On October 21, 2009, the Court held a hearing on Plaintiff's Motion for Temporary Restraining Order in which he sought reinstatement to his position as an English teacher at Dunbar High School. After hearing from both parties and allowing Plaintiff to testify and put on evidence, the Court denied the Motion for Temporary Restraining Order, finding Plaintiff had little chance of success on the merits, and found it unlikely Plaintiff would suffer irreparable harm. Plaintiff requested an expedited hearing on his Motion for Preliminary Injunction.

The Court accommodated that request. On November 9, 2009, the Court, in a lengthy proceeding, carefully considered the evidence presented and arguments of the parties. The Court found Plaintiff's likelihood of success on the merits was unlikely and that Plaintiff failed to demonstrate he would suffer irreparable harm.

On December 9, 2009, the Court allowed Plaintiff to amend his complaint a second time to add another count for "general discrimination." On December10, 2009, Defendant filed this Motion to Dismiss pursuant to Rule 12(b)(6). On December 24, 2009, Plaintiff filed an Opposition. On January 4, 2010, Defendant filed a reply to Plaintiff's Opposition. On January 13, 2010, Plaintiff filed a "Reply to Defendant's Reply to Plaintiff's opposition to Defendant's Motion to Dismiss." The Motion is fully briefed and ripe for discussion.

**Standard of Review**

The filing of a motion to dismiss pursuant to Rule 12(b)(6) does not call upon Plaintiff to offer proof. Rather the Court accepts the claim as true, and construes all facts and inferences in favor of the claimant. *Atkins v. Indus. Telecommunications Ass'n,* 660 A.2d 885, 887 (D.C. 1995). All that is required of the complaint is "a short and plain statement of the claim showing that the pleader is entitled to relief." Super. Ct. Civ. R 8(a)(2). Such a statement must simply "give the defendant fair

notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). "Indeed it may appear on the face of the pleadings that a recovery is a very remote and unlikely but that is not the test." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The complaint satisfies the requirements of Rule 8(a) if it gives a defendant notice of the basis for the suit.

Discussion

Defendant moves to dismiss Plaintiff's Second Amended Complaint under Rule 12(b)(6). Defendant argues that Plaintiff has failed to exhaust his administrative remedies. Plaintiff does not address that argument. Instead Plaintiff argues that his Complaint (as amended) is pled with sufficient particularity to survive the Defendant's Motion. In addition, Plaintiff argues that each defendant is liable under the theory of *respondeat superior*.[2] The Court agrees with the arguments advanced by the Defendants insofar as Plaintiff has failed to exhaust his administrative remedies.

It is a fundamental principle of "administrative law that no one is entitled to judicial relief for a supposed or threatened injury until the

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[2]The Court notes that Defendants have not challenged the basis of Plaintiff's suit against the individual and municipal defendants under the theory of agency. It is unclear to the Court why Plaintiff has focused his opposition as to whether the District of Columbia is vicariously liable for the individually named Defendants alleged tortious conduct.

prescribed administrative remedy has been exhausted." *Riverside Hosp. v. D.C. Dept. of Health*, 944 A.2d 1098, 1107 (D.C. 2008). "Administrative and judicial efficiency require all claims be first raised at the agency level to allow appropriate development and administrative response before judicial review." *AFGE v. D.C. WASA*, 942 A.2d 1108, 1114 (D.C. 2007). "If the statute does mandate [administrative] exhaustion, a court cannot excuse it." *District of Columbia v. Craig*, 930 A.2d 946, 956 (D.C. 2007). In *Davis & Assocs. v. Williams*, 892 A.2d 1144, 1148-49 (D.C. 2006) (some citations omitted), the Court of Appeals opined:

> The exhaustion requirement is intended to maintain proper relationships between courts and the agencies that have been given regulatory responsibility in certain specialized areas. Application of the doctrine affords the courts the benefit of the agency's expertise and promotes judicial efficiency by development of the factual record before the agency, thereby at times, eliminating the need for judicial review. *Barnett v. District of Columbia Dep't of Employment Servs.*, 491 A.2d 1156, 1160 (D.C. 1985) (citations omitted). However, the exhaustion rule is not one of jurisdiction. See *District of Columbia v. Group Ins. Adm.*, 633 A.2d 2, 20 (D.C. 1993) (citing *National Treasury Employees Union v. King*, 295 U.S. App. D.C. 153, 156, 961 F.2d 240, 243 (1992)

(distinguishing on the basis of its flexibility the exhaustion of administrative remedies doctrine from jurisdiction and standing)... This doctrine applies to public employees, such as Plaintiff, who challenge their dismissal as part of a reduction-in-force. D.C. Code Section 1-624.04. The Comprehensive Merit Personnel Act ("CMPA") establishes a merit personnel system that, inter alia, provides for expeditious treatment of public employee grievances. *District of Columbia v. Thompson*, 593 A.2d 621, 625 (D.C. 1991). Those "seeking relief from an unfair labor practice ordinarily must exhaust their administrative remedies [Employee Relations] Board before they may seek relief on arguable unfair labor practice claims in Superior Court." *AFGE*, 942 A.2d at 1110. Administrative and judicial efficiency require all claims be first raised at the agency level to allow appropriate development and administrative response before judicial review. Id. at 1114. (citing *Orius Telecomm. v. District of Columbia Dep't of Employment Servs.*, 857 A.2d 1061,1068 (D.C. 2004) (quoting *Hughes v. District of Columbia Dep't of Employment Servs.*, 717 A.2d 909, 912 (D.C. 1998).

The Court of Appeals has recognized, in rare cases, "circumstances in which a court of equity is justified in considering the merits of an administrative action" when a plaintiff fails to exhaust his administrative remedies. *Barnett*, 491

A.2d at 1161. To fall within this exception, however, a plaintiff must demonstrate a "strong showing" of compelling circumstances" to justify a Court's intervention. Id. (citations omitted). It is subject to exceptions for compelling reasons. *Group Ins. Adm.*, 633 A.2d at 20 (citing *Dano Resource Recovery v. District of Columbia*, 566 A.2d 633 at 20 (citing *Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 486 (D.C. 1989) (listing as exceptions to the doctrine "inadequate remedy, unavailable remedy, and futility"); see also *Barnett*, 491 A.2d at 1160-62 (adopting the principle that the failure to exhaust administrative remedies may be excused for compelling reasons in unemployment compensation appeals); *Randolph-Sheppard Vendors of America v. Weinberger*, 795 F.2d 90, 106-07 (1986) (listing as exceptions to the doctrine, for example, the futility of resorting to the agency process, inadequacy of the administrative remedy, or a showing that irreparable injury would result in the absence of immediate judicial review).

In this case, Plaintiff has failed to demonstrate any compelling circumstances to excuse his failure to exhaust his administrative remedies and the Court finds Plaintiff claims do not fall with any judicially recognized exception. Plaintiff, in testimony and in his pleadings, has not suggested that agency review would be futile. Nor has Plaintiff suggested that any administrative remedy would be inadequate. Finally, the Court found, based on the evidence presented, in the hearings on Plaintiff's Motion for Temporary Restraining Order and

Plaintiff's Motion for Preliminary Injunction, that Plaintiff has failed to satisfy the test for irreparable harm. While it is unfortunate when any employee is discharged, Plaintiff's allegations set forth nothing more than a typical reduction-in-force. Plaintiff alleges that he was hired on August 28, 2008 at Dunbar High School and received an email confirmation that he had been selected to remain on for second school year. He further alleges that, during his second year, the administration at Dunbar High School did not assign him a classroom and moved him to In-School-Suspension Coordinator. On October 2, 2009, Plaintiff was terminated as part of a reduction-in-force.[3] Accepting all of Plaintiff's allegations as true, as it must, *Atkins*, 660 at 885, the Court finds Plaintiff has failed to demonstrate compelling circumstances

[3] Plaintiff also alleges that Defendants are liable for false imprisonment because Metropolitan Police Officers escorted him from the school upon termination. The Court, however, agrees with the arguments advanced by Defendants insofar as Plaintiff fails to state a claim for false imprisonment. With regard to Plaintiff's claim for "general discrimination," the Court again agrees with the arguments advanced by the Defendant. The allegation does not state a claim under the District of Columbia Human Rights Act ("HRA"). Plaintiff failed to allege that he is a member of a protected class and has not offered a single factual allegation that his termination was based, in part or in whole, on his membership in such class. The HRA is a comprehensive statute that prohibits discrimination based on nineteen (19) characteristics—race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, Gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, and place of residence or business. No cause of action for "general discrimination" exists.

to justify judicial intervention despite his failure to exhaust his administrative remedies.[4]

Accordingly, it is this 3rd day of February 2010 hereby

**ORDERED** that Defendant's Motion is **Granted**; it is further

**ORDERED** that Plaintiff's Second Amended

Complaint is **DISMISSED WITHOUT PREJUDICE** as to all counts.

SO ORDERED.

Natalia M. Coombs Greene
(Signed in Chambers)

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[4] The Court of Appeals has made clear that exhaustion is not a "jurisdictional prerequisite" to a court proceeding but rather a rule of "judicial administration." See *Barnett*, 491 A.2d at 1156 (citations omitted). The Court notes that the reduction-in-force to which Plaintiff challenges resulted in the dismissal of over two hundred (200) District of Columbia Public School teachers. If the Court allowed Plaintiff to circumvent the requirements of exhaustion, in this case, then any of the 200 plus dismissed teachers could presumably challenge their dismissal in Superior Court thus undermining the central purposes the exhaustion doctrine seeks to promote.

## APPENDIX K

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
**Office of Human Resources**
825 North Capitol Street, NE, Sixth Floor
Washington, D.C. 20002-4232
202/442-4090, fax: 202/442-5315

Thursday, May 14, 2009

Michael Green
Dunbar SHS
4612 New Hampshire Avenue, NW
Washington, D.C. 20011

Thank you for your participation in the selection process for Dunbar SHS. You have been selected to remain on staff for school year 2009-2010. Your official placement remains at Dunbar SHS in the capacity of Teacher, ET-15.

Your flexibility and commitment to all students of District of Columbia Public Schools is greatly appreciated. We are confident that you will continue to make a valuable contribution to the academic gains of the school and your students. Best wishes for the upcoming school year.

Sincerely,

Pankaj Rayamajhi
(202) 442-5496

Staffing Specialist
Staff & Recruitment Services
DCPS Office of Human Resources